IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13313 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S'NAGAR DISTRICT PANCHAYAT

Versus

K C BAVISI

Appearance:

1. Special Civil Application No. 13313 of 1994

MR. M.V.PATEL for MR HS MUNSHAW for Petitioner No. 1

RULE SERVED for Respondent No. 1-11

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 03/11/2004

ORAL JUDGEMENT

Even as this petition is filed in the year 1994 and admitted in the year 1995 and the impugned order of the Labour Court is stayed, since then, none appears for

the Respondents though served.

2. The petition is filed exclusively under Article 227 of the Constitution to challenge the common judgement and order dated 9.04.1984 of the Labour Court, Surandranagar in Recovery Application Nos. 631 of 1989 and 79 of 1990. Those applications appear to have arisen out of an award of reinstatement with backwages, which award was modified by the orders dated 29.12.1987 of this Court so as to reduce the award of full backwages to 50% of backwages. Even after the payment according to the modified award was made, the workman appear to have filed the Recovery Applications for recovery of the remaining amounts of 50% of backwages on the basis of subsequent order dated 12.06.1991 in Special Civil Application No. 1932 of 1988 and that order was interpreted by the Labour Court to mean that in absence of any evidence of the workman having earned out of alternative employment, they were entitled to full wages even after modification of the original award as aforesaid. This interpretation put upon the order of this Court dated 12.06.1991 in Special Civil Application No. 1932 of 1988 is not borne out. Not only that, the method and manner of calculating the amounts of backwages and the period for which such amounts are purported to have been calculated in paragraph 7 of the impugned judgement in Recovery Applications are all obscure and in the name of failure to implement the award, additional amount of 50% of backwages appears to have been ordered.

3. The common judgement and order as aforesaid is rendered in applications filed under Sub-Section (1) of Section 33 C of the Industrial Disputes Act, 1947. Since the claim of the respondents was neither based upon the original award of the Labour Court nor on the order dated 12.06.1991 in Special Civil Application No. 1932 of 1988 of this Court and since the basis of the claim of the respondent was seriously disputed and could hardly be made out, the impugned order could not have been made by the Labour Court in exercise of its limited jurisdiction under Section 33 C (1) of the Industrial Disputes Act, 1947. Since the impugned order is clearly found to be without jurisdiction and unsustainable on facts, it is required to be set aside. Accordingly the petition is allowed and the common impugned order dated 9.04.1984 of the Labour Court, Surendranagar in Recovery Application Nos. 631 of 1989 and 79 of 1990 is set aside. Rule is made absolute with no order as to costs.

(D.H.Waghela,J)

Jayanti*